

STATEMENT OF  
CONGRESSMAN MAURICE HINCHEY

BEFORE THE  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

H.R. 1478, THE "CARMELO RODRIGUEZ MILITARY MEDICAL  
ACCOUNTABILITY ACT OF 2009"

MARCH 24, 2009

Chairman Cohen, Ranking Member Franks and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the Carmelo Rodriguez Military Medical Accountability Act of 2009.

The focus of this hearing is about equal protection under the law. The question before you is whether or not we, as members of this Congress, believe that members of our nation's military are deserving of the same rights as you or I.

In our country, if you or a member of your family goes to a doctor or medical professional for treatment and that professional is negligent in their job, you have the legal right to hold that healthcare provider accountable through the judicial system. For example, if you had a planned surgery to amputate your left leg and the doctors involved were negligent in that surgery and removed your right leg, you would have a method of recourse. That recourse is available for all of our citizens, including those in federal prison. But that is not the case for members of the military.

In 1950, nearly 60 years ago, the U.S. Supreme Court ruled in *Feres vs. United States* that military members and their families have no right or ability to sue the military for negligent medical care given to them during their service. The ruling, which has subsequently been referred to as the *Feres Doctrine*, has left families with no recourse for addressing the loss of a loved one due to obvious medical malpractice by military doctors and other medical personnel.

Sadly, my constituent and his family are all too familiar with this situation.

Sgt. Carmelo Rodriguez was a young, strong Marine. He was dedicated to his country and family and served admirably as a platoon leader in Iraq. After being repeatedly misdiagnosed by military doctors, Sgt. Rodriguez's cancer spread throughout his body and weakened him to the point that he went from being an

athletic 190 pound man to weighing less than 80 pounds. He left behind a loving family, including a seven year old son.

The death of Sgt. Rodriguez is an extraordinary tragedy that has left his family with nowhere to turn. As the result of a misguided law and subsequent U.S. Supreme Court ruling, the Rodriguez family and many other military families in similar situations have no way of holding the military responsible for the negligence of military medical personnel.

Joining the military should not mean that one has to give up his or her right to hold medical providers accountable. The Carmelo Rodriguez Military Medical Accountability Act of 2009 will finally bring accountability into the military medical system and afford our service members and their families the same rights that the rest of us have when it comes to medical malpractice.

This bill would legislatively reverse the Feres Doctrine. It would only apply to military personnel who were injured by medical negligence by military medical personnel. Importantly, this legislation prohibits any claim arising out of the combatant activities of the Armed Forces during time of armed conflict, which means military medical personnel working in combat would be exempt. In addition, this legislation would require the payment of any claims to be reduced by the value of other federal benefits received as a result of the injury.

In addition to providing the Rodriguez family and other military families with a way to hold the military accountable for the wrongful death and injuries of loved ones, this bill helps ensure that the military, like any other healthcare institution, takes steps to improve care so that no one else ever has to go through what the Rodriguez's have endured.

Sgt. Rodriguez's situation speak directly to the fact that our military, including the military's health care system, has been spread far too thin by our ongoing military operations. Our military is facing shortfalls of doctors, nurses, and other health care staff across the board. It is incumbent upon the military to ensure that it has doctors who know how to diagnose non-combat injuries and diseases such as skin cancer rather than just having doctors who are trained to treat combat wounds.

In the opinion of the subcommittee, how could it be possible that of all Americans, members of the military and their families are left no recourse in the face of such medical negligence?

Unfortunately, the Rodriguez family is not alone.

In California, the wife and two small children of Staff Sergeant Dean Witt, want to know why the military can't be held accountable when he died after routine appendicitis surgery.

Christine Lemp, whose husband, James, died after receiving questionable medical care for a stomach virus in Missouri, deserves to know why there's no recourse to holding the military accountable.

Eight National Guardsman and their families from the New York City area deserve answers in the face of the medical negligence that occurred after their exposure to depleted uranium in Iraq.

This country and this Congress have affirmed their support for the men, women and families of the United States military. And now this lasting injustice must be fixed.

This bill isn't about members of the military being compensated fairly for medical negligence, it's about holding our military accountable for its actions and for its responsibility to its members.

As a veteran and member of Congress, I believe we must match the dedication and sacrifice of our soldiers with the adequate healthcare they deserve and a fair avenue of recourse in the case that they do not receive it.

I am hopeful that this Subcommittee will agree and work with me to advance this important legislation.

Thank you for this opportunity to present this testimony.